



### ERISA AND ARBITRATION MATTERS

A recent decision by the Seventh Circuit Court of Appeals provides additional options to Trustees of ERISA plans who want to limit lawsuits against their plans. In *Smith v. Bd. Of Directors of Triad Manufacturing*, the court ruled that Trustees of ERISA plans may require participants who bring certain lawsuits against the plan to instead bring their claim in arbitration. In addition, the court determined that ERISA plans may prohibit class-action lawsuits.

On September 10, 2021, the Seventh Circuit decided *Smith v. Bd. of Directors of Triad Manufacturing, Inc.* In *Smith*, Smith, a participant in a defined contribution ERISA plan (“Plan”), sued for alleged breaches of fiduciary duty. Smith sought relief that included removing the Trustee. Several defendants challenged the suit based on Plan provisions that (1) required arbitration; (2) required individual and not class-action proceedings; and (3) prohibited any form of relief to anyone but the claimant. Their challenge was denied.

The *Smith* court found that ERISA claims are generally arbitrable, and that a plan may prohibit class actions. However, the arbitration provisions in *Smith* could not be enforced due to the “effective vindication” exception. This exception invalidates an arbitration agreement if it “prevent[s] the ‘effective vindication’ of a federal statutory right.” The exception “certainly” covers any provision “forbidding the assertion of certain statutory rights.”

Applying this “rare” exception, the *Smith* court found that the arbitration agreement prevented Smith from asserting statutory rights. One of Smith’s claims arose from an ERISA section that permits equitable relief, “including removal of [the] fiduciary”—which is inherently plan-wide relief. However, the Plan precluded relief

that was not limited to the claimant. The Plan provision would act as a “prospective waiver of a party’s right to pursue statutory remedies,” so the “effective vindication” exception disallowed it.

*Smith* recognizes a plan’s significant authority to control disputes. An ERISA plan may generally prescribe arbitration and forbid class actions. But it may not deprive a participant of rights under ERISA, including the right to pursue statutory remedies. Though the “effective vindication” exception is narrow, plans should still ensure that their provisions for resolving disputes (1) do not prohibit the exercise of any rights, and (2) do not prospectively waive a party’s right to pursue any statutory remedy that ERISA contemplates. Plans should keep in mind that even imprecise remedies, such as “other equitable or remedial relief,” may implicate plan provisions and potentially nullify them. Though plans retain authority to shape a dispute, the substance of ERISA, and the rights it conveys, cannot be altered.

If you have any additional questions or would like to discuss this further, please do not hesitate to contact Asher, Gittler & D’Alba, Ltd.

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